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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to
Revoke Probation Against:

DANIEL CLIFFORD MOORE
P.O. Box 77981
Stockton, California 95267

Registered Nurse License No. 488960

Respondent.

Case No. *2009-75*

**ACCUSATION AND PETITION
TO REVOKE PROBATION**

Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

Registered Nurse License

2. On or about March 31, 1993, the Board of Registered Nursing issued Registered Nurse License Number 488960 to Daniel Clifford Moore ("Respondent"). The registered nurse license will expire on August 31, 2010, unless renewed.

Prior Discipline

3. In a disciplinary action entitled "In the Matter of Accusation Against Daniel Clifford Moore," Case No. 2004-173, the Board of Registered Nursing issued a Decision,

1 effective February 15, 2007, in which Respondent's Registered Nurse License No. 488960 was
2 revoked. However, the revocation was stayed and Respondent was placed on probation for a
3 period of three (3) years with certain terms and conditions. A copy of that Decision is attached as
4 **Exhibit A** and is incorporated by reference.

5 JURISDICTION

6 4. Section 2750 of the Business and Professions Code ("Code") provides, in
7 pertinent part, that the Board may discipline any licensee, including a licensee holding a
8 temporary or an inactive license, for any reason provided in Article 3 (commencing with Code
9 section 2750) of the Nursing Practice Act.

10 5. Code section 2764 provides, in pertinent part, that the expiration of a
11 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
12 against the licensee or to render a decision imposing discipline on the license. Under Code
13 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
14 years after the expiration. Technicians, to encourage appropriate consistency in the
15 implementation of this subdivision.

16 6. Code section 118, subdivision (b), provides, in pertinent part, that the
17 expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
18 action during the period within which the license may be renewed, restored, reissued or
19 reinstated.

20 STATUTORY PROVISIONS

21 7. Code section 2761, subdivision (a), states, in pertinent part:

22 The board may take disciplinary action against a certified or licensed nurse
23 or deny an application for a certificate or license for any of the following:

24 (a) Unprofessional conduct . . . ,

25 8. Code section 2762 states, in pertinent part:

26 In addition to other acts constituting unprofessional conduct within the
27 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
for a person licensed under this chapter to do any of the following:

28 (a) Obtain or possess in violation of law, or prescribe, or except as
directed by a licensed physician and surgeon, dentist, or podiatrist administer to

1 himself or herself, or furnish or administer to another, any controlled substance as
2 defined in Division 10 (commencing with Section 11000) of the Health and Safety
Code or any dangerous drug or dangerous device as defined in Section 4022.

3 **COST RECOVERY**

4 9. Code section 125.3 provides, in pertinent part, that the Board may request
5 the administrative law judge to direct a licensee found to have committed a violation or
6 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
7 and enforcement of the case.

8 **ACCUSATION**

9 10. **DRUGS**

10 "Benzodiazepine" is a generic classification for drugs consisting of Schedule IV
11 controlled substances and dangerous drugs within the meaning of Code section 4022 in that it
12 requires a prescription under federal law.

13 "Amphetamine" is a Schedule II controlled substance as designated by Health
14 and Safety Code section 11055, subdivision (d)(1) and a dangerous drug pursuant to Code
15 section 4022, in that it requires a prescription under federal and state laws.

16 **CAUSE FOR DISCIPLINE**

17 **(Self-Administrator Controlled Substances)**

18 11. Respondent has subjected his license to discipline under Code section
19 2762, subdivision (a), on the grounds of unprofessional conduct, in that on or about October 31,
20 2007, Respondent self-administered Benzodiazepines and Amphetamines, both controlled
21 substances, without lawful authority.

22 **PETITION TO REVOKE PROBATION**

23 12. Grounds exist for revoking the probation and reimposing the order of
24 revocation of Respondent's Registered Nurse License No. 488960. Condition 15 of the Decision
25 states:

26 If Respondent violates the conditions of this probation, the Board after
27 giving the respondent notice and an opportunity to be heard, may set aside the stay
28 order and impose the stayed revocation of the respondent's license or reimpose
probation under the same or additional or other terms and conditions as the Board,
in its discretion, determines appropriate under the circumstances.

1 If during the period of probation, an accusation or petition to revoke
2 probation has been filed against respondent's license or the Attorney General's
3 Office has been requested to prepare an accusation or petition to revoke probation
4 against respondent's license, the probationary period shall automatically be
5 extended and shall not expire until the accusation or petition has been acted upon
6 by the Board.

7 13. Respondent has violated the Probation Program, as set forth in the
8 following paragraphs:

9 **FIRST CAUSE TO REVOKE PROBATION**

10 **(Failure to Submit Written Reports)**

11 14. At all times after the effective date of Respondent's probation, Condition
12 5, stated:

13 Respondent, during the period of probation, shall submit or cause to be
14 submitted such written reports/declarations and verifications of actions under
15 penalty of perjury, as required by the Board. These reports/declarations shall
16 contain statements relative to respondent's compliance with all the conditions of
17 the Board's Probation Program. Respondent shall immediately execute all release
18 of information forms as may be required by the Board or its representatives.

19 Respondent shall provide a copy of this decision to the nursing regulatory
20 agency in every state and territory in which he has a registered nurse license.

21 15. Respondent's probation is subject to revocation because he failed to
22 comply with Probation Condition 5, referenced above. The facts and circumstances regarding
23 this violation are, as follows:

24 a. Respondent failed to submit evidence that he completed the fingerprint
25 process.

26 b. Respondent failed to submit the required quarterly reports in a timely
27 manner.

28 **SECOND CAUSE TO REVOKE PROBATION**

(Failure to Make Cost Recovery Payments)

2. At all times after the effective date of Respondent's probation, Condition
11, stated:

Respondent shall pay to the Board costs associated with its investigation
and enforcement pursuant to Business and Professions Code section 125.3 in the
amount of \$4,994. Respondent shall be permitted to pay these costs in a payment

1 plan approved by the Board, with payments to be completed no later than three
2 months prior to the end of the probation term. *Before the order of suspension can
3 be lifted, Respondent shall sign a Cost Recovery Plan and begin payments to the
4 Board.*

5 If respondent has not complied with this condition during the probationary
6 term, and respondent has presented sufficient documentation of good faith efforts
7 to comply with this condition, and if no other conditions have been violated, the
8 Board, in its discretion, may grant an extension of the respondent's probation
9 period up to one year without further hearing in order to comply with this
10 condition. During the one year extension, all original conditions of probation will
11 apply.

12 3. Respondent's probation is subject to revocation because he failed to
13 comply with Probation Condition 11, referenced above. The facts and circumstances regarding
14 this violation are that Respondent failed to make regular payments pursuant to the Cost Recovery
15 Payment Plan. Said payment amount was \$113.50 per month and payments were scheduled to
16 commence on April 1, 2007. Respondent made five payments but has failed to make any
17 payments since August of 2007.

18 **THIRD CAUSE TO REVOKE PROBATION**

19 **(Failure to Provide Evidence of a Completed Mental Health Examination)**

20 4. At all times after the effective date of Respondent's probation, Condition
21 13, stated:

22 Within 45 days of the effective date of this decision, *and prior to the
23 resumption of practice as a registered nurse*, respondent shall have a mental
24 health examination including psychological testing as appropriate to determine his
25 capability to perform the duties of a registered nurse. The examination will be
26 performed by a psychiatrist, psychologist or other licensed mental health
27 practitioner approved by the Board, who has experience in the diagnosis and
28 treatment of chemical dependency and alcoholism. The examining mental health
practitioner will submit a written report of that assessment and recommendations
to the Board. All costs are the responsibility of the respondent.

If respondent is determined to be unable to practice safely as a registered nurse,
the licensed mental health care practitioner making this determination shall immediately
notify the Probation Program and respondent by telephone, and respondent shall
immediately cease practice and may not resume practice until notified by the Probation
Monitor that respondent may engage in the practice of registered nursing. During the
period of suspension, respondent shall not engage in any practice for which a license
issued by the Board is required, until the Probation Monitor has notified respondent that a
mental health determination permits respondent to resume practice.

If the examiner discovers that respondent is or has been dependent upon
drugs or alcohol or has had problems with drugs or alcohol (i.e., drug dependence

1 in remission or alcohol dependence in remission), then respondent must further
2 comply with the following terms and conditions....

3 5. Respondent's probation is subject to revocation because he failed to
4 comply with Probation Condition 13, referenced above. The facts and circumstances regarding
5 this violation are that Respondent failed to provide the Board with evidence that he had
6 completed a mental health examination by the due date of May 7, 2007.

7 **FOURTH CAUSE TO REVOKE PROBATION**

8 **(Failure to Participate in the Board's Drug Screening)**

9 6. At all times after the effective date of Respondent's probation, Condition
10 14, stated:

11 Regardless of whether additional chemical dependency treatment and
12 rehabilitation is recommended by the licensed mental health professional referred
13 to in the Mental Health Examination Term, above, respondent, at respondent's
14 expense, shall participate in a random, biological fluid testing or a drug screening
15 program which the Board approves. The length of time and frequency will be
16 subject to approval by the Board; *however, respondent must timely complete ten*
17 *(10) random biological fluid tests before the order of suspension will be lifted.*
Respondent is responsible for keeping the Board informed of respondent's current
telephone number at all times. Respondent shall also ensure that messages may
be left at the telephone number when he is not available and ensure that reports
are submitted directly by the testing agency to the Board, as directed. Any
confirmed positive finding shall be reported immediately to the Board by the
program and respondent shall be considered in violation of probation.

18 In addition, respondent, at any time during the period of probation, shall
19 fully cooperate with the Board or any of its representatives, and shall, when
20 requested, submit to such tests and samples as the Board or its representatives
21 may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or
22 other controlled substances.

23 If respondent has a positive drug screen for any substance not legally
24 authorized and not reported to the coordinating physician, nurse practitioner, or
25 physician assistant, and the Board files a petition to revoke probation or an
26 accusation, the Board may suspend respondent from practice pending the final
27 decision on the petition to revoke probation or the accusation.


28 7. Respondent's probation is subject to revocation because he failed to
comply with Probation Condition 14, referenced above. The facts and circumstances regarding
this violation are that Respondent failed to participate in the Board's drug screening program by
failing to submit to biological fluid testing, as follows:

2/6/2007 Missed test, did not call, not calling in to random system.

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3. Taking such other and further action as deemed necessary and proper.

DATED: 9/26/08


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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30544157.wpd
ps (8/27/08)
ela (9/23/08)

Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2004-173

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

DANIEL CLIFFORD MOORE
P.O. BOX 77981
STOCKTON, CA 95267

Registered Nurse License No. 488960

Respondent.

Case No. 2004-173

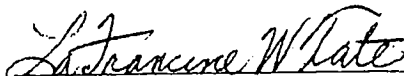
OAH No. N-2006060170

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on February 15, 2007.

IT IS SO ORDERED January 16, 2007.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

DANIEL CLIFFORD MOORE
P.O. Box 77981
Stockton, CA 95267

Registered Nurse License No. 488960

Respondent.

Case No. A 2004-173

OAH Case No. N2006060170

PROPOSED DECISION

This matter was heard before Marilyn A. Woollard, Administrative Law Judge (ALJ) for the Office of Administrative Hearings (OAH), State of California, on September 7, 2006, in Sacramento, California.

Deputy Attorney General Jana L. Tuton represented Ruth Ann Terry in her official capacity as the Executive Officer of petitioner, the Board of Registered Nursing (petitioner or Board) at the hearing.

Respondent Daniel Clifford Moore (respondent or Mr. Moore) was present and represented himself.

Oral and documentary evidence was received. After the parties' closing arguments, the record was closed.¹

FACTUAL FINDINGS

1. On March 31, 1993, the Board issued Registered Nurse (RN) License Number 488960 to respondent Daniel Moore. This license is currently in effect until its expiration on August 31, 2008.

¹ Due to the ALJ's medical leave, the matter was submitted for decision on October 23, 2006.

2. On September 17, 2004, the Board issued a Decision in OAH Case No. N2004030672 (hereafter, Decision), which became effective October 17, 2004. The Board made the following findings of import to this decision.

First, the Board determined that on September 19, 2003, in the Superior Court of Amador County, respondent pled guilty to felony violations of (1) Health and Safety Code section 11377, subdivision (a), for possession of methamphetamine, and (2) Vehicle Code section 4462.5, for display of false evidence of registration. Following these pleas, the Superior Court entered a Deferred Entry of Judgment Order, pursuant to which respondent was required to comply with various conditions of criminal probation for 18 months. These conditions included abstaining totally from use of controlled substances; submitting to random urinalysis drug testing; successfully completing a 12-week drug treatment program; and payment of fines and costs of probation monitoring.

Second, the Board found respondent's credibility to be poor due to his "contradictory and implausible explanations."

Third, the Board acknowledged that respondent did not test positive for drugs and showed no evidence of being under the influence of drugs at the time of his detention and arrest. Other than his guilty plea to the possession charge, there was no evidence of any actual drug use or abuse by respondent, who emphatically denied using drugs. The Board found "no evidence of any problems with Mr. Moore's work performance as a registered nurse," and there was "no evidence that Mr. Moore's nursing competency is anything but satisfactory."

The Board revoked respondent's license; however, it stayed the revocation and placed respondent on five (5) years of probation, subject to numerous terms and conditions.

3. At the time of the Board's Decision, respondent was employed full time as a charge nurse for Delta Blood Bank (Delta), and supervised a team of phlebotomists. This job entailed very irregular hours, with travel to several sites in Northern California to supervise blood draws. In addition, respondent worked as an RN at Genteva Health Services (Genteva), a home health agency, approximately 10 hours per month, on an on-call basis.

4. On November 8, 2004, Board probation monitor Kathleen Brazil met with respondent to explain the conditions of his probation as outlined in the Decision, and to answer any questions he might have. During this meeting, Ms. Brazil reviewed an 11-page document entitled "Conditions of Probation Supplement" with respondent, and made the conditions specific to him. For example, under Condition 8 of the Decision, the level of employment supervision respondent was required to be under during his probation was not specified. Ms. Brazil explained to respondent (1) that any employment as an RN must be approved by the Board, after he submitted required information about the position; (2) that he was under the "maximum" level of

supervision for at least the first six months of his probation; and (3) that it was his responsibility to ensure that work verification and evaluations forms were submitted to the Board.

At the conclusion of the interview, respondent signed the following certification in Ms. Brazil's presence:

I understand the terms and conditions of my probation order, my responsibility to fully comply with the Board's probation program, my responsibility to obey all federal, state and local laws and regulations related to the practice of registered nursing and the directions of my Probation Monitor or other Board Representative.

I understand that my failure to comply with any of the conditions of probation stated herein and in the Board's Decision/Stipulation, or laws substantially related to the practice of registered nursing is a direct violation of my probation and may result in the suspension of my practice or license, or the revocation of my license.

5. Respondent actively participated in the requirements of his criminal probation. Respondent participated in random drug testing and a drug treatment program at Valley Community Counseling Services and he successfully completed the deferred entry of judgment program. On October 12, 2005, a deferred entry of judgment order was issued, pursuant to which respondent's "previously entered plea is withdrawn and charges are dismissed based on satisfactory performance." Respondent did not make this information available to the Board.

6. In contrast to his compliance with criminal probation, respondent received two "Notices of Violation" of his probation conditions from the Board.

On October 27, 2005, respondent appeared at Ms. Brazil's office in response to her repeated telephone calls. Ms. Brazil advised respondent he was in violation of his probation because she had not received any work performance evaluations from his employer since January 2005. Additional violations were identified: first, the Board approved position for respondent was at Delta's blood bank, not in its mobile unit; second, respondent was not receiving the required "maximum" supervision at Delta; and, third, respondent's ongoing occasional work at Genteva had not been approved for employment by the Board. Ms. Brazil reminded respondent that he had not complied with other conditions of probation, including random urinalysis, and physical and mental health exams.

On November 1, 2005, Ms. Brazil sent a "Notice of Violation" to respondent summarizing their conversation of October 27, 2005. Respondent was notified that he

was in violation of Probation Conditions 2, 5, 7, 8, 11, 12, 13, and 14, and that these violations were sufficient to result in further action against his license.

On February 10, 2006, Ms. Brazil sent respondent a second "Notice of Violation," in which she reiterated that respondent continued to violate the condition that he work under maximum supervision, as well as the conditions outlined in the November 1, 2005, Notice of Violation. Respondent was provided with a blank Work Performance Evaluation (Evaluation) form for the period from November 2005 through January 31, 2006, and was instructed to have his Delta supervisor complete and return this form to the Board. Respondent was further advised that his case was being forwarded to the Attorney General for action against his license.

7. On April 4, 2006, petitioner Ruth Ann Terry, in her official capacity as the Board's Executive Officer, filed the instant Petition to Revoke Probation based upon respondent's ongoing failure to comply with conditions of probation imposed as a condition of ongoing licensure by its Decision. Petitioner requests that the disciplinary order stayed in its Decision be lifted, thereby revoking respondent's RN license.

On April 20, 2006, respondent acknowledged receipt of the petition and supporting documents, and timely filed a notice of defense to the petition.

Respondent's Compliance with Probation Conditions

8. As set forth in Factual Finding 4, the conditions of respondent's probation with the Board, as well as respondent's primary responsibility to fulfill those conditions, were clearly explained to him shortly after the Board issued its Decision.

Respondent does not dispute that he failed to comply with the probation conditions as alleged by the Board. In defense, respondent testified that he believes he has tried to comply with his probationary terms, and that he relied upon his supervisors at Delta to comply with the supervision and evaluation reporting conditions imposed upon his employment as an RN. Respondent further argued that the Board's probation monitor should have worked more proactively with him to ensure his compliance.

Conditions 7 and 8: Employment Conditions

9. In Probation Condition 7, the Board required respondent to obtain its prior approval for any employment as an RN and to comply with its employment reporting requirements for performance evaluations and other employment related reports. In Probation Condition 8, the Board required respondent to work only under an approved level of supervision.²

² The Petition erroneously referred to the supervision condition as Condition 9; however, the Petition accurately described the supervision requirement set forth in the Decision at Condition 8 and in the two Notices of Violation. Respondent was clearly on notice of the substance of this violation.

Genteva Employment

10. *Failure to Obtain Board Approval:* After the Decision became effective, respondent failed to provide Ms. Brazil with the paperwork the Board required to determine whether to approve his work at Genteva. Ms. Brazil learned that respondent was still working at Genteva when his supervisor called to verify his license. Respondent admitted he worked at Genteva on two occasions without the Board's approval.

Delta Employment

11. On December 22, 2004, the Board approved respondent's full time, day shift employment as a probationary registered nurse at Delta's Blood Bank in Stockton. In this capacity, respondent was to perform quality control and maintenance procedures for blood collection, under maximum supervision, with Delta's medical director, Dr. Benjamin Spindler, as his supervisor and work site monitor. In her letter of this date, Ms. Brazil informed Dr. Spindler, in pertinent part, that:

- a. maximum supervision "means that a MD or a registered nurse must be present in the work site during the entire shift worked";
- b. respondent must be evaluated on a monthly basis for three months and on a quarterly basis thereafter if satisfactory;
- c. respondent was not allowed to provide RN services that were significantly different from those described in this letter; and,
- d. respondent must be allowed time to submit to random drug screening when requested.

Ms. Brazil also provided Dr. Spindler with a Verification of Employment (Verification) form, and with blank Evaluation forms to complete and return to the Board in January, February, and April 2005.

In early January 2005, Dr. Spindler signed the Verification form and agreed to maintain the maximum level of supervision during respondent's probation, and to submit the required periodic performance evaluations to the probation monitor. In his Evaluation for the period October 2004 through December 21, 2004, also signed in January 2005, Dr. Spindler described respondent as a "charge nurse" in a work unit that included mobile operations. Dr. Spindler rated respondent as exceeding position expectations on a regular basis.

On November 1, 2005, Dr. Spindler completed the Board's Evaluation Report regarding respondent's work at Delta as a "staff nurse" in a work unit "as assigned" for the period from January 1, 2005, through October 31, 2005. Dr. Spindler reported that

respondent was under “close” supervision, that his work in all applicable rated categories was excellent, and that the position did not require respondent to handle or distribute controlled substances. In a brief narrative, Dr. Spindler reported that respondent “has performed in an exemplary fashion providing excellent service and leadership to the public and to his team and his organization.” Dr. Spindler further advised that he had committed to “close supervision” of respondent for the Board and that this level of supervision “has been accomplished.”

12. Dr. Spindler and several nurse consultants for the Board discussed the conditions of respondent’s employment at Delta; however, none of these individuals testified. By letter dated January 13, 2006, the Board’s Nursing Education Consultant Geri Nibbs, reiterated to Dr. Spindler that respondent’s job approval for employment at Delta required that he work under “maximum” supervision, in a fixed location at the Blood Bank, without overtime hours or “floating” assignments. Dr. Spindler was advised to immediately restructure respondent’s position to comply with these requirements.

In his reply letter dated February 10, 2006, Dr. Spindler advised Ms. Nibbs of respondent’s restructured work assignment at Delta. This assignment included full-time scheduled work at one Delta location in Stockton. Dr. Spindler clarified that he worked closely with respondent but was not at respondent’s work site all day. Respondent’s position was restructured so that another licensed nurse was assigned as respondent’s site coordinator and, to ensure maximum supervision, there would be either a medical doctor or a licensed nurse present when respondent is in the workplace.

The Board did not respond to Dr. Spindler’s letter describing respondent’s restructured work assignment. On May 25, 2006, Dr. Spindler reported a change in respondent’s work site address to Ms. Nibbs. Dr. Spindler did not provide the Board with any additional work evaluations regarding respondent.

13. Respondent testified that he tried to comply with the Board’s employment conditions, and that he relied on representations made to him by Dr. Spindler and by Delta’s human resources manager, John O’Neal, that they were working with the Board and had “clarified” his work status with Delta. After his conversation with Ms. Brazil in October 2005, respondent told Dr. Spindler that the Board believed him to be out of compliance with work conditions. Respondent was later advised that Delta had “clarified” this with the Board. Respondent’s testimony is supported by Dr. Spindler’s November 1, 2005, Evaluation, and his February 10, 2006, letter to the Board.

Conditions 2, 5, 12 and 13: Physical and Mental Health Examinations/Reports

14. Probation Conditions 2 and 5 of the 2004 Decision ordered respondent to “fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of

respondent's compliance with the Board's Probation Program," and to provide the Board with all requested reports and documentation regarding compliance. The Supplement and the certification signed by respondent placed on him a duty to actively ensure compliance with each of the conditions imposed.

Probation Conditions 12 and 13 ordered respondent to complete, respectively, a physical and a mental health examination at his own expense by practitioners approved by the Board, within 45 days of the effective date of the Decision. Respondent was required to follow all recommendations for treatment, therapy, or counseling made by the examiners. The mental health examination was to be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board, "who has experience in the diagnosis and treatment of chemical dependency and alcoholism." Pursuant to these conditions and Condition 5, respondent was required to submit reports of these evaluations by December 15, 2004.

15. Respondent did not submit to either a medical or a mental health examination and did not provide the Board with the required reports by December 15, 2004, or on any other date. In November 2005, Ms. Brazil provided respondent with names of individuals to complete the ordered physical and mental health examinations. She also suggested that respondent contact his health insurance provider and Delta's Employee Assistance Program for help in locating qualified providers. As of the date of the hearing, approximately 21 months after the due date for the completion of these examinations, respondent had not submitted any names to the Board for approval, and had not participated in the ordered evaluations.

These facts are not disputed by respondent. As mitigation, respondent asserted that he did not know who was an approved examiner. Respondent testified that he had changed his insurance to find someone to conduct the examinations and then learned that the one approved examiner he located was under investigation by the medical board. Consequently, respondent did not obtain an appointment. Respondent was concerned about taking time off of work to comply with these conditions. At the hearing, respondent suggested that he could take vacation time from work and complete these conditions within the month.

Condition 14: Random Drug Testing

16. In Condition 14, the Board required respondent to submit to random drug testing by providing bodily fluids for analysis. The Board asserts that respondent violated this condition by failing to participate in a random fluid testing program for drug screening within 24 hours of being notified to test as requested on February 15, 2005, May 9, 2005, June 1, 2005, June 23, 2005, July 5, 2005, August 1, 2005, September 8, 2005, September 22, 2005, and October 4, 2005.

While participating in random drug testing for his criminal probation, respondent believed that he did not have to comply with Board ordered random drug

testing. Respondent did not call Ms. Brazil or other Board representative to verify this belief. After completing his criminal probation on October 12, 2005, respondent began to drug test for the Board. He tested negative on six occasions from November 3, 2005, through April 5, 2006; however, on four of these occasions, respondent appeared “late,” for the mandated testing. His delay in reporting for testing ranged from 90 minutes to two days.³

Probation Condition 11: Cost Recovery

17. Probation Condition 11 required respondent to repay the amount of \$4,994 for the costs of its investigation and enforcement that resulted in the Decision. This condition provides that respondent “shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.”

At the November 8, 2004, probation interview, respondent asked Ms. Brazil if he could postpone the Cost Recovery Plan (Plan) until his RN job at Delta was approved. Ms. Brazil agreed to re-do the Plan and to mail it to him after the job approval was processed. On December 22, 2004, Ms. Brazil sent respondent a revised Plan for his signature, with a request that it be returned no later than January 1, 2005. According to this Plan, respondent would make an initial payment of \$118 to the Board by January 1, 2005, and 53 monthly payments of \$92 to comply with the payment of costs condition.

Respondent never returned a signed copy of the Plan, and he has never made any payments toward this amount. Respondent testified that he never received the Plan for his signature, and believed he had until three months before the termination of probation to comply with this condition. Respondent agreed that he never asked Ms. Brazil about the Plan’s whereabouts at any later time, including the October 2005 interview, or after receiving two Notices of Violations, each of which indicated a violation of this condition.

Disposition

18. Respondent has the ultimate responsibility to comply with probationary terms. Nevertheless, respondent’s assertion that he tried to comply with the Board’s Conditions 7 and 8, relating to his work at Delta, by relying on assurances of his employer, has some merit. Respondent’s deference as an employee to his supervising physician, who is also the medical director of Delta, for clarifying his work status with the Board was objectively supported by the sporadic Evaluations, and letters from Dr. Spindler to the Board.

³ Since April 2006, respondent’s account at the testing lab has been “on hold” due to payment delinquency. As a consequence, the Board cannot order respondent to test. The petition did not allege any failure to drug test after October 4, 2005; accordingly, evidence to this effect is not addressed.

Respondent's testimony that he tried to comply with the Board's Conditions 5, 11, 12, 13, and 14, was not objectively supported by the facts and was therefore implausible and lacked credibility. As indicated in his testimony, however, respondent's failure to take action to comply with these conditions was primarily driven by his inability or unwillingness to take time off from his job at Delta, rather than by a defiance of the Board. Since the 2004 Decision was issued, respondent has completed the requirements of his criminal probation, which included completing a drug treatment program and random drug testing. However, respondent has consistently failed to ask his employer for time off to participate in the Board's required physical and mental health examinations and drug tests. Respondent has drug tested "late" because he refuses to make or receive personal telephone calls or voice mails regarding drug testing while at work.

Respondent's work culture at Delta was tellingly portrayed in Dr. Spindler's recommendation (Exhibit C) which emphasized respondent's role in training and setting an example for Delta's new employees. Respondent is characterized as "a very positive influence" who has set an example that has led to fewer "punctuality and attendance problems" among employees. Respondent's extremely passive behavior regarding pursuing his probation obligations further suggests that he is hesitant to cause his employer to make any further accommodations on his behalf. It is ironic that respondent's efforts to continue his work as an RN at Delta have seriously jeopardized his licensure as an RN.

It is apparent that respondent's employment at Delta has interfered with his ability to comply with the conditions of his probation. Nevertheless, respondent's testimony that he does not pose a danger to the public as a nurse was consistent with findings in the initial Decision and was corroborated by Dr. Spindler's evaluations and correspondence with the Board from late 2004 through May 2006. While Dr. Spindler did not testify at the hearing, the Board has historically accepted his written evaluations and opinions of respondent's nursing abilities as reliable. Under these circumstances, it does not appear that it would be against the public interest to continue respondent's probation, with a suspension of his license until such time as he comes into compliance with these conditions, up to a maximum suspension of one year.

CONCLUSIONS OF LAW

1. BURDEN AND STANDARD OF PROOF: The burden of proof for a petition to revoke probation is on the Board as the petitioning party. While proof of facts by "clear and convincing evidence" was required for the Board's initial proceeding to revoke respondent's professional license, the lower "preponderance of evidence" standard of proof applies to this petition for revocation.

2. CAUSE TO REVOKE PROBATION: The Board's Decision granting respondent probation was based upon its conclusion that, in addition to his criminal probation, the "terms of probation have been selected to provide longer term assurances that Mr. Moore's claims that he does not use methamphetamine are true." Condition 15 of the Decision, staying the ordered revocation of respondent's license and imposing probation, provides:

Violation of Probation. If respondent violates the conditions of this probation, the Board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of respondent's license, or reimpose probation under the same or additional or other terms and conditions as the Board, in its discretion, determines appropriate under the circumstances.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

3. As set forth in Factual Findings 6, 11, 12, and 13, respondent violated Probation Conditions 7 and 8, by his failure to ensure that his work performance evaluations were submitted in a timely manner to the Board. After submitting the initial Verification and Evaluation in January 2005, Dr. Spindler did not submit the required Evaluation forms to the Board during most of 2005. After November 2005, no Evaluation forms were returned to the Board.

4. As set forth in Factual Findings 11 through 13, respondent violated probation conditions 7 and 8 by his failure to ensure that he worked under the "maximum" level of employment supervision at Delta. This violation continued through February 10, 2006. Dr. Spindler and the Board had ongoing written and verbal communications about the level of supervision and how it applied to respondent. Following Dr. Spindler's February 10, 2006 letter, however, the Board appeared to have accepted as appropriate the level of "close" but not maximum supervision outlined for the restructured position.

5. As set forth in Factual Findings 9 and 10, respondent violated probation conditions 7 and 8 by continuing to work on two occasions as an RN at Genteva without obtaining the Board's approval for this position.

6. As set forth in Factual Findings 14 and 15, respondent violated Probation Conditions 2, 5, 12 and 13, by failing to obtain the ordered physical and mental health examinations and to submit reports regarding those examinations to the Board.

7. As set forth in Factual Finding 16, respondent violated Condition 14 by failing to submit to random drug testing within 24 hours as directed by the Board. Respondent failed to communicate with the Board to verify his assumption that he did not have to comply with this condition during the time he drug tested for his criminal probation. After he began testing for the Board, on at least four occasions, respondent did not report for testing within 24 hours.

8. As set forth in Factual Finding 17, respondent violated Condition 11 by failing to sign a payment plan for cost recovery. By its express terms, this condition does not provide that a probationary RN may delay payment of any assessed costs until three months prior to the end of probation. Rather, the three month provision applies to the completion of a payment plan, after approval of the plan by the Board.

9. DISPOSITION: As set forth in the Factual Findings as a whole, and in Legal Conclusions 1 through 8, the Board has met its burden of proof that respondent has violated Probation Conditions 2, 5, 7, 8, 11, 12, 13, and 14. These violations conclusively establish cause to revoke respondent's probation and to lift the September 17, 2004, order staying the revocation of his license.

10. As set forth in Factual Findings 2, 11, and 18, there is no evidence that respondent poses a risk to the public as a registered nurse. Nonetheless, respondent has failed to comply with critical probation conditions that were imposed by the Board to provide long term verification that he does not abuse drugs. Respondent's failure to comply with the Board's probation conditions cannot be tolerated. Respondent's primary justification for his failure to comply with these conditions was that it was difficult to do so while working as an RN at Delta. At this time, respondent's employment has impeded his ability to comply with his probation. Respondent's probation shall begin with a license suspension during which time respondent must come into compliance with these conditions.

ORDER

The petition to revoke respondent Daniel Clifford Moore's probation is hereby GRANTED. The September 17, 2004, stay of the disciplinary order revoking respondent's Registered Nurse License No. 488960 is lifted, and the REVOCATION IS REIMPOSED as of the effective date of this Decision. However, the revocation is STAYED for a period of three (3) years, during which time respondent shall be placed on probation.

As of the effective date of this Decision, respondent's license shall be suspended for a period of up to twelve (12) months. During the suspension period, respondent shall fully comply with probation Conditions 12, 13, and 14, and respondent shall begin to comply with Condition 11 by signing a Cost Recovery Plan and commencing regular payments as determined by the Board. Respondent's compliance with these conditions

is a condition precedent to lifting the order of suspension, and if respondent fails to comply with these conditions within the maximum twelve (12) suspension period, his probation shall be revoked. If respondent successfully completes these conditions, he may work as a probationary registered nurse during the final three (3) years of probation, subject to the following terms and conditions:⁴

SEVERABILITY

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the full extent permitted by law.

(1) OBEY ALL LAWS

Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the license application process or prior probationary period.

If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM

Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during the period of suspension.

(3) REPORT IN PERSON

Respondent, during the period of probation, shall appear in person at

⁴ Changes and/or additions to the 2004 probationary conditions are indicated in italics.

interviews/meetings as directed by the Board or its designated representatives.

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE

Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when respondent resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states or territories where he has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing license during the term of probation.

(5) SUBMIT WRITTEN REPORTS

Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verifications of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE

Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board. This condition shall not apply during the period of suspension.

For the purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his/her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS

Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to any prospective employer and immediate supervisors prior to commencement of any other employment in nursing or other health care related position.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION

Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum – The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate – The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) Minimum – The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- (d) Home Health Care – If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

Upon successful completion of the conditions precedent to lifting the suspension of his license, respondent's level of supervision may be "moderate."

(9) EMPLOYMENT LIMITATIONS

Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool during the period of probation, unless the Board or its designee approves otherwise in writing.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall only work on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity unless the Board or its designee approves otherwise in writing.

If respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE

If he has not already done so, respondent, at respondent's expense, shall enroll and successfully complete a course relevant to the practice of registered nursing no later than six months prior to the end of respondent's probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course. Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course. The Board shall return the original documents to respondent after photocopying them for its records. The Board may, in its discretion, waive this requirement upon presentation of evidence of training and education completed by respondent during the probationary period furnished by respondent's employer.

(11) COST RECOVERY

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$4,994.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term. *Before the order of suspension can be lifted, Respondent shall sign a Cost Recovery Plan and begin payments to the Board.*

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

(12) PHYSICAL EXAMINATION

Within 45 days of the effective date of this decision, *and prior to the resumption of practice as a registered nurse*, respondent, at respondent's expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved

by the Board before the assessment is performed, submit an assessment of respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify both the Probation Program and respondent by telephone. Respondent shall immediately cease practice and shall not resume practice until notified in writing by the Probation Monitor that respondent may engage in the practice of registered nursing. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Probation Monitor has notified respondent that a medical determination permits respondent to resume practice.

(13) MENTAL HEALTH EXAMINATION

Within 45 days of the effective date of this decision, *and prior to the resumption of practice as a registered nurse*, respondent shall have a mental health examination including psychological testing as appropriate to determine his capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board, who has experience in the diagnosis and treatment of chemical dependency and alcoholism. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Probation Program and respondent of this determination by telephone, and respondent shall immediately cease practice and may not resume practice until notified by the Probation Monitor that respondent may engage in the practice of registered nursing. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Probation Monitor has notified respondent that a mental health determination permits respondent to return to practice.

If the examiner discovers that respondent is or has been dependent upon drugs or alcohol or has had problems with drugs or alcohol (i.e., drug dependence in remission or alcohol dependence in remission), then respondent must further comply with the following additional terms and conditions of probation:

(A) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE

Respondent, at respondent's expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within a reasonable time approved by the Board, shall be enrolled in a program. If a program is not successfully completed within a reasonable time, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(B) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS-

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(C) THERAPY OR COUNSELING PROGRAM

Respondent, at respondent's expense, shall participate in an on-going counseling program until such time as the Board releases him from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

(14) SUBMIT TO TESTS AND SAMPLES

Regardless of whether additional chemical dependency treatment and rehabilitation is recommended by the licensed mental health professional referred to in the Mental Health Examination Term above, respondent, at respondent's expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board; *however, respondent must timely complete ten (10) random biological fluid tests before the order of suspension will be lifted.* Respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation.

(15) VIOLATION OF PROBATION

If a respondent violates the conditions of this probation, the Board, after giving respondent notice and an opportunity to be heard, may set aside the stay order

and impose the stayed revocation of respondent's license, or reimpose probation under the same or additional or other terms and conditions as the Board, in its discretion, determines appropriate under the circumstances.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(16) LICENSE SURRENDER

During respondent's term of probation, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender respondent's license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

(17) RESTORATION UPON COMPLETION OF PROBATION

Upon successful completion of probation, respondent's license shall be fully restored.

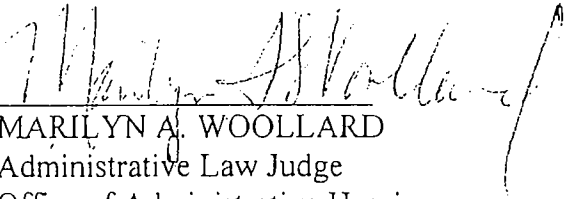
(18) ACTUAL SUSPENSION OF LICENSE

Respondent is suspended from the practice of registered nursing for a period of up to twelve (12) months, beginning with the effective date of this Decision. Prior to the lifting of the suspension order, respondent shall fully comply with Conditions 12, 13, and 14, and respondent shall begin to comply with Condition

11 by signing a Cost Recovery Plan and commencing regular payments as determined by the Board.

During the suspension period, all probation conditions are in full force and effect except those relating to actual nursing practice. This period of suspension will not apply to the reduction of this probationary time period.

DATED: November 1, 2006


MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Petitioner

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation
Against:

DANIEL CLIFFORD MOORE
P. O. Box 77981
Stockton, CA 95267

Registered Nurse License No. 488960

Respondent.

Case No. ¹⁷³ A 2004-766

**PETITION TO REVOKE
PROBATION**

Complainant alleges:

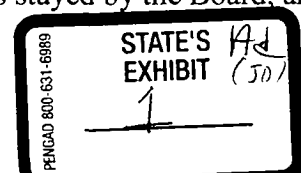
PARTIES

1. Ruth Ann Terry, M.P.H., R.N. ("Petitioner") brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. On or about March 31, 1993, the Board of Registered Nursing ("Board") issued Registered Nurse License No. 488960 to Daniel Clifford Moore ("Respondent"). The license will expire on August 31, 2006, unless renewed.

3. In a disciplinary action entitled "In the Matter of Daniel Clifford Moore," Case No. 2004-173, the Board issued a decision, effective October 17, 2004, revoking Registered Nurse License Number 488960. The revocation was stayed by the Board, and

///



1 Registered Nurse License No. 438960 was placed on probation for a period of five (5) years
2 under the following pertinent terms and conditions:

3 "(2) Comply with The Board's Probation Program.

4 Respondent shall fully comply with the conditions of the
5 Probation Program established by the Board and cooperate
6 with representatives of the Board in its monitoring and
7 investigation of the respondent's compliance with the
8 Board's Probation Program. Respondent shall inform the
9 Board in writing within no more than 15 days of any address
10 change and shall at all times maintain an active, current license
11 status with the Board, including during any period of suspension.

12

13 (5) Submit Written Reports. Respondent, during
14 the period of probation, shall submit or cause to be submitted
15 such written reports/declarations and verification of actions
16 under penalty of perjury, as required by the Board. These
17 reports/declarations shall contain statements relative to
18 respondent's compliance with all the conditions of the
19 Board's Probation Program. Respondent shall immediately
20 execute all release of information forms as may be required
21 by the Board or its representatives.

22

23 (7) Employment Approval and Reporting

24 Requirements. Respondent shall obtain prior approval from
25 the Board before commencing or continuing any employment,
26 paid or voluntary, as a registered nurse. Respondent shall cause
27 to be submitted to the Board all performance evaluations and
28 other employment related reports as a registered nurse upon
request of the Board.

29

30 (9) Employment Limitations. Respondent shall not
31 work for a nurse's registry, in any private duty position as a
32 registered nurse, a temporary nurse placement agency, a
33 traveling nurse, or for an in-house nursing pool during the
34 period of probation, unless the Board or its designee approves
35 otherwise in writing.

36 Respondent shall not work for a licensed home health
37 agency as a visiting nurse unless the registered nursing supervision
38 and other protections for home visits have been approved by the
39 Board. Respondent shall not work in any other registered nursing
40 occupation where home visits are required.

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Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity unless the Board or its designee approves otherwise in writing.

....

(11) Cost Recovery. Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$4,994.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary terms, and respondent has presented sufficient documentation of good faith effort to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. during the one year extension, all original conditions of probation will apply.

(12) Physical Examination. Within 45 days of the effective date of this decision, respondent, at respondent's expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of respondent's physical condition and capability to perform the duties of a registered nurse. such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board. . . .

(13) Mental Health Examination. The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board, who has experience in the diagnosis and treatment of chemical dependency and alcoholism. The examining mental health practitioner will submit a written report of that assessment

and recommendations to the Board. All costs are the responsibility of the respondent.

(14) Submit to Tests and Samples. Regardless of whether additional chemical dependency treatment and rehabilitation is recommended by the licensed mental health professional referred to in the Mental Health Examination Term above, respondent, at respondent's expense, shall participate in a random, biological fluid testing or drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. . . .

(15) Violation of Probation. If a respondent violates the conditions of this probation, the Board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of respondent's license, or reimpose probation under the same or additional or other terms and conditions as the Board, in its discretion, determines appropriate under the circumstances.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board."

4. Copies of the Accusation and Decision in Case No. 2004-173, are attached hereto as "Exhibit A," and are incorporated herein by reference.

JURISDICTION

5. Section 2750 of the Business and Professions Code ("Code") provides:

"Every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article. As used in this article, 'license' includes certificate, registration, or any other authorization to engage in practice regulated by this chapter. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein."

GROUND FOR REVOCATION OF PROBATION

6. Pursuant to Condition No. 15 of the Decision in Case No. 2004-173, grounds exist to revoke probation and set aside the stay of revocation on Registered Nurse License Number 488960, in that Respondent has violated the following conditions of probation:

1 a. Condition #2 - Comply with Probation Program: Respondent failed
2 to fully comply with the Board's Probation Program as set forth in paragraph 6(b) through 6(f),
3 below.

4 b. Condition #5 - Submit Written Reports: Respondent failed to submit
5 requested reports/declarations, in that the required Physical Health and Mental Health exam
6 reports were not submitted to the Board by the December 15, 2004.

7 c. Condition #7 - Employment Approval and Reporting Requirements:
8 Respondent failed to obtain prior approval from the Board before continuing employment as a
9 registered nurse at Gentiva Home Health and Respondent failed to have the required work
10 performance evaluations submitted to the Board in a timely manner.

11 d. Condition #9 - Employment Limitations: Respondent failed to work
12 under the approved level (maximum level) of supervision while working at the Delta Blood
13 Bank.

14 e. Condition #11 - Cost Recovery: Respondent failed to comply with the
15 cost recovery requirement ordered in Case No. 2004-173, in that Respondent failed to sign the
16 cost recovery repayment plan and return it to the Board by January 1, 2005; and, Respondent
17 failed to make cost recovery repayments.

18 f. Condition #12 - Physical Examination: Respondent failed to complete
19 the required Physical Health Exam and submit the narrative report to the Board by the December
20 15, 2004.

21 g. Condition #13 - Mental Health Examination: Respondent failed to
22 complete the required Mental Health Exam and submit the narrative report to the Board by the
23 December 15, 2004.

24 h. Condition #14 - Submit to Tests and Samples: Respondent failed to
25 participate in a random fluid testing program, in that Respondent failed to respond to requests
26 for drug screening testing on February 15, 2005, May 9, 2005, June 1, 2005, June 23, 2005,
27 July 5, 2005, August 1, 2005, September 8, 2005, September 22, 2005, and October 4, 2005.

28 ///

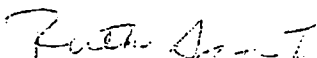
PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing the Board issue a decision:

1. Revoking the probation that was granted by the Board in Case No. 2004-173, and reimposing the disciplinary order that was stayed, thereby revoking Registered Nurse License No. 488960, issued to Daniel Clifford Moore; and,

2. Taking such other and further action as deemed necessary and proper.

DATED: 7/3/06


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Petitioner

03579110-SA2006100573

Moore.Pet.wpd

jtr 02/24/06

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Daniel Clifford Moore

Registered Nurse License No. 4889^b80

Respondent.

Case No. 2004-173

OAH No. N2004030672

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on October 17, 2004.

IT IS SO ORDERED this 17th day of September, 2004.

Landra R. Erickson

President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSES
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DANIEL CLIFFORD MOORE
Post Office 77981
Stockton, California 95267

Registered Nurse License No. RN 4889⁶⁰₈₀

Respondent.

Case No. 2004-173

OAH No. N2004030672

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California heard this matter in Sacramento, California on June 10, 2004.

Diana Woodward Hagle, Deputy Attorney General, represented the Board of Registered Nurses, Department of Consumer Affairs.

Daniel Clifford Moore appeared in pro per.

The record was closed and the matter was submitted on June 10, 2004.

FACTUAL FINDINGS

1. Ruth Ann Terry, M.P.H., R.N., made the allegations contained in the Accusation in her official capacity only as Executive Officer of the Board of Registered Nursing (the Board), Department of Consumer Affairs, State of California. The Accusation was made on January 15, 2004. Daniel Clifford Moore timely filed a Notice of Defense to the Accusation. The Board has jurisdiction to revoke, suspend or impose conditions upon any license issued in the State of California to practice certified or registered nursing.¹

2. The Board's official records as of November 30, 2003, show that the Board issued Daniel Clifford Moore Registered Nurse License number 488960 on March 31, 1993.

¹ Business and Professions Code section 2761.

The record also shows that Mr. Moore received his nursing training at San Joaquin Delta College, Stockton, California in 1992. The license is in full force and effect and is due to expire August 31, 2004, unless renewed. There is no history of previous disciplinary action against Mr. Moore by the Board.

3. Mr. Moore pled guilty on September 19, 2003, in the Superior Court, County of Amador to violations of Health and Safety Code section 11377(a), possession of methamphetamine, and Vehicle Code section 4462.5, display of false evidence of registration. Both guilty pleas were as felonies.

4. The court on October 16, 2003, entered a Deferred Entry of Judgment Order pursuant to Penal Code section 1000. The Order defers entry of judgment for a period of 18 months, during which time Mr. Moore is subject to a number of terms and conditions. Those conditions include that he report to a probation officer; keep the probation officer advised of current employment and of his residence; totally abstain from the use of controlled substances; submit to random urine testing for the presence of drugs on demand of his probation officer; enroll in and successfully complete a 12 week drug treatment program; and to pay fines and costs of his probation monitoring.

5. The Deferred Entry of Judgment Order requires Mr. Moore to return to court on April 20, 2005, for review. The Order provides, in pertinent part, "However, after successful completion of the assigned program and a showing that I have benefited from diversion, at the end of the period of diversion, criminal charges in this matter shall be dismissed, and I may indicate in any response to any questions concerning my prior criminal record that I have not been arrested or diverted for this offense." The Order also provides that if Mr. Moore fails to comply with the conditions, he will be sentenced for the offenses.

6. The circumstances leading to Mr. Moore's arrest and conviction took place on April 1, 2003. Mr. Moore was driving on Ridge Road just east of Running Gold, California, in Amador County at about 9:30 p.m. An Amador County Sheriff's Deputy stopped Mr. Moore for speeding and because the light for the rear license plate was out. The deputy requested Mr. Moore produce his driver's license, and proofs of registration and insurance. Mr. Moore produced a valid California driver's license, but was unable to produce current registration or proof of insurance. The deputy discovered the vehicle's registration had been expired since March 2000, but the rear license plate had a current 2003 registration sticker. Mr. Moore told the deputy the registration fees had been paid for the vehicle, but the vehicle was a salvage car, and some work had to be done on the car before the process would be complete.

7. The deputy impounded Mr. Moore's vehicle because the registration expiration was more than six months old, there was no proof of insurance and Mr. Moore was displaying false evidence of registration. The deputy wrote Mr. Moore a citation for the false registration, and ordered him out of the vehicle. The deputy advised he was required to conduct an inventory of all the contents of the vehicle before it was towed. He asked Mr. Moore if he would consent to a search of his person and of the vehicle. Mr. Moore replied,

"Sure, I have nothing to hide." The deputy searched Mr. Moore's person and found nothing. The deputy found a small cylindrical container under the front driver's seat, where Mr. Moore had been sitting. The opaque plastic container had a lid on one end and telescoped into a cap on the other. A white powdery substance was observed all around the edge of where the two parts telescoped together. The deputy, based on his training and experience, suspected the white, powdery substance to be methamphetamine. He believed the container may contain more drugs, or money or other things of value he was required to account for in his inventory of the vehicle. He opened the container and located three baggies containing a white powdery substance. The deputy made a positive presumptive field test of the powdery substance on the outside of the container and of the contents of the three baggies for methamphetamine.

8. At booking, the deputy gave Mr. Moore a test to determine whether he was under the influence of drugs. The test was negative. There was no evidence Mr. Moore was under the influence of drugs or had taken any drugs at the time of the detention and arrest.

9. The deputy weighed the white powder in the baggies and found it to be 3.3 grams, less .7 grams for the weight of the baggies. Later testing by the Department of Justice confirmed the substance was methamphetamine.

10. Mr. Moore acknowledged the plastic cylinder belonged to him. He described it as a pill grinder, used for many of his home health care patients who are too elderly or infirm to swallow a whole pill. He recalled the pill grinder had been in his nursing bag until about a week before the stop. He had not seen the grinder in his bag during that week. The deputy found Mr. Moore's nursing bag in the vehicle's trunk, but the deputy did not recall or note that the pill grinder was in the bag. Mr. Moore retrieved his vehicle the next morning after his arrest, along with his nursing bag. His pill grinder was not in his nursing bag.

11. Mr. Moore blamed his brother for the methamphetamine possession allegation and his cohabitant girlfriend for the false registration violation in his evidentiary hearing testimony. Mr. Moore's testimony was self-contradictory and unpersuasive. Mr. Moore acknowledged the pill grinder was his, and the vehicle was his, but denied any knowledge of how the pill grinder got under the front seat of his vehicle. He contended his brother, a drug user, took his vehicle from his mother's home, where Mr. Moore had been living, and drove it without his knowledge or permission. From this explanation, Mr. Moore implied that when his brother drove the car, the brother presumably took the pill grinder from Mr. Moore's nursing bag, put the methamphetamine in it, and left the pill grinder beneath the front seat.

12. Mr. Moore's explanation for the false registration tags on his vehicle was equally implausible. Mr. Moore contended his girlfriend mistakenly affixed the registration tag for her vehicle to his rear license plate, and then later junked her car. He had no correlative evidence for such a claim, and did not explain what his girlfriend was doing for a registration tag on her vehicle if hers was affixed to his vehicle. His explanation for being in the area where he was stopped was curious as well. Mr. Moore testified that he was on his

way from Lodi to a friend's house in Volcano to get his car repaired so he could get the registration process completed. The friend is a mechanic and was planning to help Mr. Moore repair the vehicle, a previous salvage car, so it could pass a brake and lamp inspection, required to obtain a current registration for the vehicle. Mr. Moore implicitly acknowledged in this testimony that he was well aware that his vehicle's registration had been expired for a lengthy period of time, and that it was unlawful to drive the vehicle without passing the inspection and obtaining a currently valid registration.

13. Mr. Moore's conduct has a substantial relationship to the qualifications, duties or functions of a registered nurse. Unlawful possession of controlled substances is strictly prohibited for registered nurse licensees. The possession and display as valid of false vehicle registration tags is a form of fraud and dishonesty. Honesty and reliability are mandatory character traits for a nurse. Nurses occupy a position of great trust and responsibility in the health care field.

14. Mr. Moore has been a R.N. since 1993. He worked for Dameron Hospital in Stockton, California beginning in March 1989 as a licensed vocational nurse (LVN). He continued with Dameron as a R.N. when he received his credentials. He worked full time as a recovery room nurse at Dameron. He also worked part-time for Genteva Health Services, a home health agency. Mr. Moore continues to work for Genteva to date, approximately 10 hours per month, on an on-call basis. Mr. Moore testified he quit working for Dameron in October 1992. He now works as a charge nurse for Delta Blood Bank. He is in charge of a team of phlebotomists. He started with Delta in September 2003. He has very irregular hours and must travel to several sites in Northern California to supervise blood draws. There is no documentary evidence of Mr. Moore's work record with any of his employers in evidence.

15. Mr. Moore testified to at least two different reasons he left his employment at Dameron. He initially testified that he left Dameron employment in order to care for his elderly grandmother, who tried to commit suicide after the passing of her husband. He later testified that she was hospitalized in Oregon, where she lived, until December 2002 as a result of her self-inflicted wounds. Later in the evidentiary hearing, he testified he moved in with his mother, who was in the process of going through an ugly divorce, in September 2002. He planned to engage in some traveling nursing, but then the incident with his grandmother occurred, and he was required to be around his family because he was the only family member who could provide her care. He obtained a 6 month leave of absence from Dameron, but he stayed away from that employment "too long". He cannot return to Dameron employment without losing his accumulated seniority.

16. There is no evidence in this record of any actual drug use or drug abuse by Mr. Moore. The only evidence of any association between Mr. Moore and methamphetamine is his acknowledgement in his guilty plea that he possessed methamphetamine on the night he was arrested. Mr. Moore continued to deny emphatically that he does not and has not used methamphetamine or any other drug. Despite the fact that Mr. Moore's testimony

consistently lacked credibility, there was no evidence in the record, other than the plea to the possession allegation, to rebut his contentions.

17. Mr. Moore testified that he has resolved the problem with his vehicle's registration. The vehicle was released back to him the day following the night of his arrest.

18. Mr. Moore is currently subject to random urinalysis as part of his deferred entry of judgment agreement. He has been subject to the deferral agreement for about nine months, or half the term of the agreement. There was no evidence whether he has been subjected to a random urinalysis yet. He has paid his fines and assessments, but he has not yet enrolled in the required twelve week drug rehabilitation program. His irregular work hours has made consistent attendance at a once per week evening class very difficult.

19. Mr. Moore produced little evidence of rehabilitation. The record leaves the impression that there is much that is not known. Mr. Moore repeatedly pointed to the fact that he voluntarily consented to searches of his person and vehicle; that no drugs were located on his person; and there was no evidence he had used any of the drugs found by the deputy. The only evidence of Mr. Moore's connection to drugs is the possession of the pill grinder with the small quantity of methamphetamine outside and inside, and the conclusive presumption that flows from Mr. Moore's guilty plea that he possessed that methamphetamine, as a result of his deferral agreement.

20. The record contains no evidence of any problems with Mr. Moore's work performance as a registered nurse. There is no evidence that Mr. Moore's nursing competency is anything but satisfactory.

21. A certification of the costs of investigation and enforcement of this matter incurred by the Board was made by the Deputy Attorney General under penalty of perjury and was offered in evidence.² The certification sets forth total costs incurred by the Board for the services of the Deputy Attorney General in this action of \$4994.00 for fiscal year 2003-2004. No other costs were sought. The costs are presumed reasonable.³ Mr. Moore did not contest the amount of the costs or the manner of the calculation.

LEGAL CONCLUSIONS

1. The burden of proof for all of the allegations made in this matter rests upon the Board and requires the Board to prove the allegations by "clear and convincing" evidence.⁴ Clear and convincing evidence requires a finding of high probability. Clear and convincing evidence means the proof in support of the allegations must be clear, explicit and

² Business and Professions Code section 125.3.

³ *Id.*

⁴ *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853

unequivocal--so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind.⁵

2. "The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to the following:"

"..."

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or regulations adopted pursuant to it."

"..."

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."⁶

3. Mr. Moore entered into a deferred entry of judgment agreement with the Amador County Superior Court pursuant to Penal Code section 1000. The legal effect of this deferral agreement is a matter of considerable controversy. Mindful of the provisions of Penal Code section 1000.5, the Board has alleged only the underlying facts of the methamphetamine possession incident, and did not allege as a basis for discipline any criminal conviction for that offense. The Board does contend the facts of Mr. Moore's possession of methamphetamine may be considered as a basis for disciplinary action, regardless of the deferral agreement. In addition, the Board contends the deferral agreement is invalid with respect to the Vehicle Code section 4462.5 violation, because it is not lawfully subject to the provisions of Penal Code section 1000. The Board's contentions have merit.

4. "(a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for a violation of Section 11350, 11357, 11364, 11365, 11377, or 11550 of the Health and Safety Code, or subdivision (b) of Section 23222 of the Vehicle Code, or Section 11358 of the Health and Safety Code if the marijuana planted, cultivated, harvested, dried, or processed is for personal use, or Section 11368 of the Health and Safety Code if the narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant and was not sold or furnished to another, or subdivision (d) of Section 653f if the solicitation was for acts directed to personal use only, or Section 381 or subdivision (f) of Section 647 of the Penal Code, if for being under the influence of a controlled substance, or Section 4060 of the Business and Professions Code, and it appears to the prosecuting

⁵ *In Re Marriage of Weaver* (1990) 224 Cal.App.3d 473; *In Re David C.* (1984) 152 Cal.App.3d 1189, 1208.

⁶ Business and Professions Code section 2761, in pertinent part.

attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:

(1) The defendant has no conviction for any offense involving controlled substances prior to the alleged commission of the charged offense.

(2) The offense charged did not involve a crime of violence or threatened violence.

(3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.

(4) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(5) The defendant's record does not indicate that he or she has successfully completed or been terminated from diversion or deferred entry of judgment pursuant to this chapter within five years prior to the alleged commission of the charged offense.

(6) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged offense.

"(b) The prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to (6), inclusive, of subdivision (a) apply to the defendant. Upon the agreement of the prosecuting attorney, law enforcement, the public defender, and the presiding judge of the criminal division of the superior court, or a judge designated by the presiding judge, this procedure shall be completed as soon as possible after the initial filing of the charges. If the defendant is found eligible, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for deferred entry of judgment at the arraignment. If the defendant is found ineligible for deferred entry of judgment, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. The sole remedy of a defendant who is found ineligible for deferred entry of judgment is a postconviction appeal.

"(c) All referrals for deferred entry of judgment granted by the court pursuant to this chapter shall be made only to programs that have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria set forth in this subdivision.

“(d) Deferred entry of judgment for a violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.4.

“(e) Any defendant who is participating in a program referred to in this section may be required to undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of the program. However, urine analysis results shall not be admissible as a basis for any new criminal prosecution or proceeding.”⁷

5. “The social philosophy and purposes that led to the enactment of Penal Code sections 1000 to 1000.4 have been described by the Supreme Court as follows: ‘Penal Code sections 1000 to 1000.4, enacted in 1972, authorize the courts to ‘divert’ from the normal criminal process persons who are formally charged with first-time possession of drugs, have not yet gone to trial, and are found to be suitable for treatment and rehabilitation at the local level. The purpose of such legislation, which has recently been adopted with variations in several of our sister states, is two-fold. First, diversion permits the courts to identify the experimental or tentative user before he becomes deeply involved with drugs, to show him the error of his ways by prompt exposure to educational and counseling programs in his own community, and to restore him to productive citizenship without the lasting stigma of a criminal conviction. Second, reliance on this quick and inexpensive method of disposition, when appropriate, reduces the clogging of the criminal justice system by drug abuse prosecutions and thus enables the courts to devote their limited time and resources to cases requiring full criminal.’”⁸

6. A violation of Vehicle Code section 4462.5 is not an offense subject to a deferred entry of judgment agreement pursuant to Penal Code section 1000. By its terms, Penal Code section 1000 excludes the Vehicle Code crime. The statute specifically enumerates a limited number of drug use and possession offenses that are subject to the section. By so enumerating, the statute excludes all other offenses.⁹ The quotation from the Supreme Court above makes clear that the purpose of Penal Code section 1000 is not served by inclusion of any unlisted offenses, particularly offenses that do not involve drug use or possession.

7. “(a) Any record filed with the Department of Justice shall indicate the disposition in those cases deferred pursuant to this chapter. Upon successful completion of a deferred entry of judgment program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified in subdivision (b). A record pertaining

⁷ Penal Code section 1000.

⁸ *People v. Koester* (1975) 53 Cal. App. 3d 631, 636, citing *People v. Superior Court (On Tai Ho)* (1974) 11 Cal 3d 59, 61-62, italics added.

⁹ *Koester*, *supra*.

to an arrest resulting in successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate."¹⁰

7. Penal Code section 1000.4 requires a successfully completed Penal Code section 1000 deferred entry of judgment agreement to be treated "to have never occurred". This provision will be available to Mr. Moore for the methamphetamine possession charge, should he successfully complete his obligations under the deferral agreement. But these provisions are unavailable, regardless of his success in completing his obligations in the deferral agreement, for the Vehicle Code section 4462.5 violation, as that violation is not subject to Penal Code section 1000's deferred entry of judgment provisions. Regardless of the deferral agreement, the Board may consider the guilty plea a conviction of the Vehicle Code offense.

8. "It is clear from a fair reading of the diversion statute that if the defendant is diverted and referred for education, treatment, or rehabilitation, the period of diversion "shall be for no less than six months nor longer than two years." (§ 1000.2.) It is also equally clear that there is nothing in this section to bar an agency or other entity from properly using information in a divertee's arrest record either before or during the period of diversion. Thus, we conclude that section 1000.5 goes into effect only upon the successful completion of diversion."¹¹

9. Penal Code section 1000.5 pertains to preguilty plea diversions, and refers in its provisions to sections 1000.4 and 1000.3. The same reasoning applies to deferred entry of judgment following guilty plea diversions. Since the diversion period set forth in the deferral agreement has not yet been successfully completed, the Board may consider Mr. Moore's admission that he possessed methamphetamine, a Schedule II controlled substance¹², by virtue of Mr. Moore's guilty plea in 2003. However, the deferred entry of judgment agreement prevents this guilty plea from being considered a criminal conviction within the meaning of section 2761 (f), because judgment and sentence has not yet been imposed, and may never be imposed.

10. Regardless of the deferred entry of judgment agreement, Mr. Moore pled guilty to a felony violation of Vehicle Code section 4462.5, displaying false evidence of registration. The deferred entry of judgment agreement does not prevent this plea from being considered a conviction, as the provisions of Penal Code section 1000 do not encompass this crime. The conviction of the Vehicle Code violation is substantially related to the qualifications, functions or duties of a registered nurse, as set forth in the Factual Findings. Therefore, Mr. Moore is guilty of unprofessional conduct, within the meaning of sections 2761(a) and (f) for the violation of Vehicle Code section 4462.5. Legal cause therefore exists to revoke or suspend Mr. Moore's R.N. license.

¹⁰ Penal Code section 1000.4, in pertinent part.

¹¹ *B.W. v. Board of Medical Quality Assurance* (1985) 169 Cal.App. 3d 219, 229.

¹² Health and Safety Code section 1105(d).

11. "In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license..."¹³

12. As set forth in the Factual Findings, the Board did not prove Mr. Moore has ever used methamphetamine. However, it is conclusively presumed as part of his guilty plea that he was in possession of a small quantity of methamphetamine on April 1, 2003 in Amador County. His admission that he possessed methamphetamine through his guilty plea as part of his deferred entry of judgment agreement may be considered for the purposes of imposing disciplinary action, pursuant to the authorities set forth above. Mr. Moore is not entitled to the shield of Penal Code section 1000.4 until he successfully completes the diversion program. He has not done so to date. In addition, the facts support a conclusion that Mr. Moore possessed the methamphetamine. His denial and explanation lacked credibility, the methamphetamine was under the seat of his car, and was in and on his pill grinder. Mr. Moore's possession of methamphetamine on April 1, 2003 constituted unprofessional conduct, within the meaning of sections 2761(a), (d), and section 2762. Separate legal cause exists to revoke or suspend Mr. Moore's registered nurse license.

13. The assessment of an appropriate penalty for the violations of the Nursing Practice Act found above is a matter of balancing the circumstances in aggravation against the circumstances in mitigation and rehabilitation. In this instance, there is not much evidence of either aggravation or rehabilitation. Mr. Moore correctly pointed out that there is no evidence that he has ever used methamphetamine, or that it ever has been found on his person or in his system. There is additionally no evidence of any problem with his nursing skills or competency. Absent proof of more than Mr. Moore's persistently unpersuasive explanations and lack of credibility, there is no evidentiary basis to aggravate any penalty to be imposed. Mr. Moore has at least nine more months of diversion, during which he is subject to random urine screening for the presence of drugs. If he fails such a test, he faces sentencing on two felonies. This provides substantial short term incentive to comply with

¹³ Business and Professions Code section 2762, in pertinent part.

the law. The terms of probation have been selected to provide longer term assurances that Mr. Moore's claims that he does not use methamphetamine are true.

14. Costs of investigation and prosecution of the action are recoverable if the Board prevails in the action.¹⁴ The Board has prevailed in the action. The costs declaration was carefully reviewed by the undersigned for the types of tasks performed, the time spent on the tasks and the relationship between the tasks and time spent to the nature of the case.¹⁵ The time spent and the tasks performed were reasonable under the circumstances, particularly considering the legal issues presented. The costs, as detailed in the Factual Findings, were not contested by Mr. Moore. The costs are reasonable and may be recovered in the amount of \$4,994.00 as part of the disciplinary Order.

ORDER

Registered Nurse License No. RN 488960, issued to Daniel Clifford Moore by the Board of Registered Nursing, is REVOKED. However, the revocation is STAYED for a period of five (5) years, during which time Mr. Moore ("respondent") shall be on probation to the Board, subject to the following terms and conditions:

SEVERABILITY

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) OBEY ALL LAWS

Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

¹⁴ Business and Professions Code section 125.3.

¹⁵ *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM

Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

(3) REPORT IN PERSON

Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE

Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when respondent resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing license during the term of probation.

(5) SUBMIT WRITTEN REPORTS

Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE

Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS

Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to any prospective employer and immediate supervisors prior to commencement of any other employment in nursing or other health care related position.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION

Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- (d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS

Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool during the period of probation, unless the Board or its designee approves otherwise in writing.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity unless the Board or its designee approves otherwise in writing.

If respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE

Respondent, at respondent's expense, shall enroll and successfully complete a course relevant to the practice of registered nursing no later than six months prior to the end of respondent's probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course. Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course. The Board shall return the original documents to respondent after photocopying them for its records. The Board may, in its discretion, waive this requirement upon presentation of evidence of training and education completed by respondent during the probationary period furnished by respondent's employer.

(11) COST RECOVERY

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$4,994.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

(12) PHYSICAL EXAMINATION

Within 45 days of the effective date of this decision, respondent, at respondent's expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If

medically determined, a recommended treatment program will be instituted and followed by respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify both the Probation Program and respondent by telephone. Respondent shall immediately cease practice and shall not resume practice until notified in writing by the Probation Monitor that respondent may engage in the practice of registered nursing. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Probation Monitor has notified respondent that a medical determination permits respondent to resume practice.

(13) MENTAL HEALTH EXAMINATION

The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board, who has experience in the diagnosis and treatment of chemical dependency and alcoholism. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Probation Program and respondent of this determination by telephone, and respondent shall immediately cease practice and may not resume practice until notified by the Probation Monitor that respondent may engage in the practice of registered nursing. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Probation Monitor has notified respondent that a mental health determination permits respondent to return to practice.

If the examiner discovers that respondent is or has been dependent upon drugs or alcohol or has had problems with drugs or alcohol (i.e., drug dependence in remission or alcohol dependence in remission), then respondent must further comply with the following additional terms and conditions of probation:

(A) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE

Respondent, at respondent's expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of

probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within a reasonable time approved by the Board, shall be enrolled in a program. If a program is not successfully completed within a reasonable time, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(B) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS-

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(C) THERAPY OR COUNSELING PROGRAM

Respondent, at respondent's expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

(14) SUBMIT TO TESTS AND SAMPLES

Regardless of whether additional chemical dependency treatment and rehabilitation is recommended by the licensed mental health professional referred to in the Mental Health Examination Term above, respondent, at respondent's expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation.

(15) VIOLATION OF PROBATION

If a respondent violates the conditions of this probation, the Board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of respondent's license, or reimpose probation under the same or additional or other terms and conditions as the Board, in its discretion, determines appropriate under the circumstances.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(16) LICENSE SURRENDER

During respondent's term of probation, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender respondent's license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

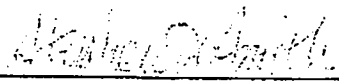
Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

(17) RESTORATION UPON COMPLETION OF PROBATION

Upon successful completion of probation, respondent's license shall be fully restored.

DATED: June 22, 2014



STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

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7

8 BEFORE THE
BOARD OF REGISTERED NURSING
9 DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2004-173

12 DANIEL CLIFFORD MOORE
Post Office Box 77981
13 Stockton, California 95267

ACCUSATION

14 Registered Nursing License No. 488960

15 Respondent.
16

17 Complainant alleges:

18 PARTIES

19 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

20 1. Complainant brings this Accusation solely in her official capacity as the
21 Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, State of
22 California (hereinafter sometimes referred to as "Board").

23 2. On March 31, 1993, the Board of Registered Nursing issued Registered
24 Nurse License No. 488960 to Daniel Clifford Moore ("respondent"). The license was in full
25 force and effect at all times relevant to the charges brought herein and will expire on August 31,
26 2004, unless renewed.

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1 7. Section 125.3 provides that the Board may request the administrative law
2 judge to direct a licensee found to have committed a violation or violations of the licensing act
3 to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

4 DRUG

5 8. "Methamphetamine" is a Schedule II controlled substance as designated by
6 Health and Safety Code section 11055(d)(2).

7 FIRST CAUSE FOR DISCIPLINE
8 [Criminal Conviction - Vehicle Code Violation]

9 9. Respondent is subject to disciplinary action under section 2761(f) in that
10 he was convicted by the court on September 19th, 2003, on his plea of guilty of violating Vehicle
11 Code section 4462.5 [false evidence of registration of a vehicle], a misdemeanor, in *People vs.*
12 *Daniel Clifford Moore* (Amador County Superior Court No. 03CR3442), an offense substantially
13 related to the qualifications, functions, and duties of a registered nurse.

14 10. Respondent is subject to disciplinary action under section 490 in that he
15 was convicted by the court on September 19th, 2003, on his plea of guilty of violating Vehicle
16 Code section 4462.5 [false evidence of registration of a vehicle], a misdemeanor, in *People vs.*
17 *Daniel Clifford Moore* (Amador County Superior Court No. 03CR3442), a crime substantially
18 related to the qualifications, functions, or duties of the profession of a registered nurse.

19 11. The circumstances of the crime are the following: on April 1st, 2003, while
20 driving his blue Lincoln Mark VII at a high rate of speed on Ridge Road in the vicinity of
21 Running Gold in Amador County, California, respondent was observed and stopped by a Deputy
22 Sheriff. The car bore a California license with a registration tag expiring in May, 2003.
23 Respondent stated to the deputy that he had owned the car since February, 2001, but he could not
24 produce either the car's registration or insurance papers; respondent assured the deputy that the
25 car was registered to him and that the insurance was paid. However, the deputy's field check
26 revealed that the car's registration had expired as of March 10th, 2000.

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1 SECOND CAUSE FOR DISCIPLINE
2 [Unprofessional Conduct]

3 12. Respondent is subject to disciplinary action under section 2761(a) and (d)
4 on the grounds of unprofessional conduct, as defined by section 2762(a), in that on April 1st,
5 2003, he possessed methamphetamine in violation of law.

6 13. The circumstances of the violation are the following: while driving his
7 blue Lincoln Mark VII at a high rate of speed on Ridge Road in the vicinity of Running Gold in
8 Amador County, California, respondent was observed and stopped by a Deputy Sheriff, who
9 found approximately 4 grams of methamphetamine in a plastic container and baggies located
10 directly under the driver's (respondent's) side seat.

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein
13 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

14 1. Revoking or suspending Registered Nurse License No. 488960, issued to
15 Daniel Clifford Moore;

16 2. Ordering Daniel Clifford Moore to pay to the Board the reasonable costs
17 of the investigation and enforcement of this case, pursuant to Business and Professions Code
18 section 125.3; and

19 3. Taking such other and further action as deemed necessary and proper.
20

21 DATED: April 15, 2004

22
23 Ruth Ann Terry
RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
24 Board of Registered Nursing
25 Department of Consumer Affairs
26 State of California
Complainant

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28 1/06/2004